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Office Supreme Court U. S.
FILED
APR 24 1905
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

JOHN W. BALLMAN, APPELLANT,
v.
THE UNITED STATES.

No. 827, 240

MOTION TO ADVANCE FOR IMMEDIATE HEARING.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

JOHN W. BALLMAN, APPELLANT,
v.
THE UNITED STATES. } No. ——.

MOTION TO ADVANCE FOR IMMEDIATE HEARING.

This case raises the question of the power of a court of the United States to punish for contempt as a means of compelling testimony from an unwilling and obstinate witness before a Federal grand jury. The facts are sufficiently shown in the opinions of Judge Lurton, printed as a separate document and filed herewith.

The matter is urgent. The commitment ordered imprisonment in a county jail until the defendant complied with a previous order to produce a certain book and answer certain questions before the grand jury. The grand jury is now in session. The commitment will expire with the expiration of the current session. The grand jury, as I understand, is not actually sitting at the present moment, having completed its remaining business, but its session has been continued for the time being in order that the embezzlement or abstraction of the money of a national bank, out of

which the present proceedings grow, may be investigated to a conclusion during the present term of court. The grand jury is therefore held in readiness to take this matter up at the point where Mr. Ballman's refusal to produce his cash book and answer the questions propounded interposed an insuperable obstacle to the progress of the investigation. The District Court and the grand jury await the action of this court, but the grand jury can not be continued and held indefinitely, and if its session terminates without a decision on the controversy by this court, the defendant can not be held under the order of commitment, and the present case will present merely a moot question.

The question is very important and of immediate importance, and a real emergency is presented. I submit, therefore, with deference and very earnestly, that the court should advance this cause forthwith for hearing, either during the current week, or on Monday, May 1, or on Monday, May 15, or on such other date during the present term as the court may prefer.

HENRY M. HOYT,
Solicitor-General.

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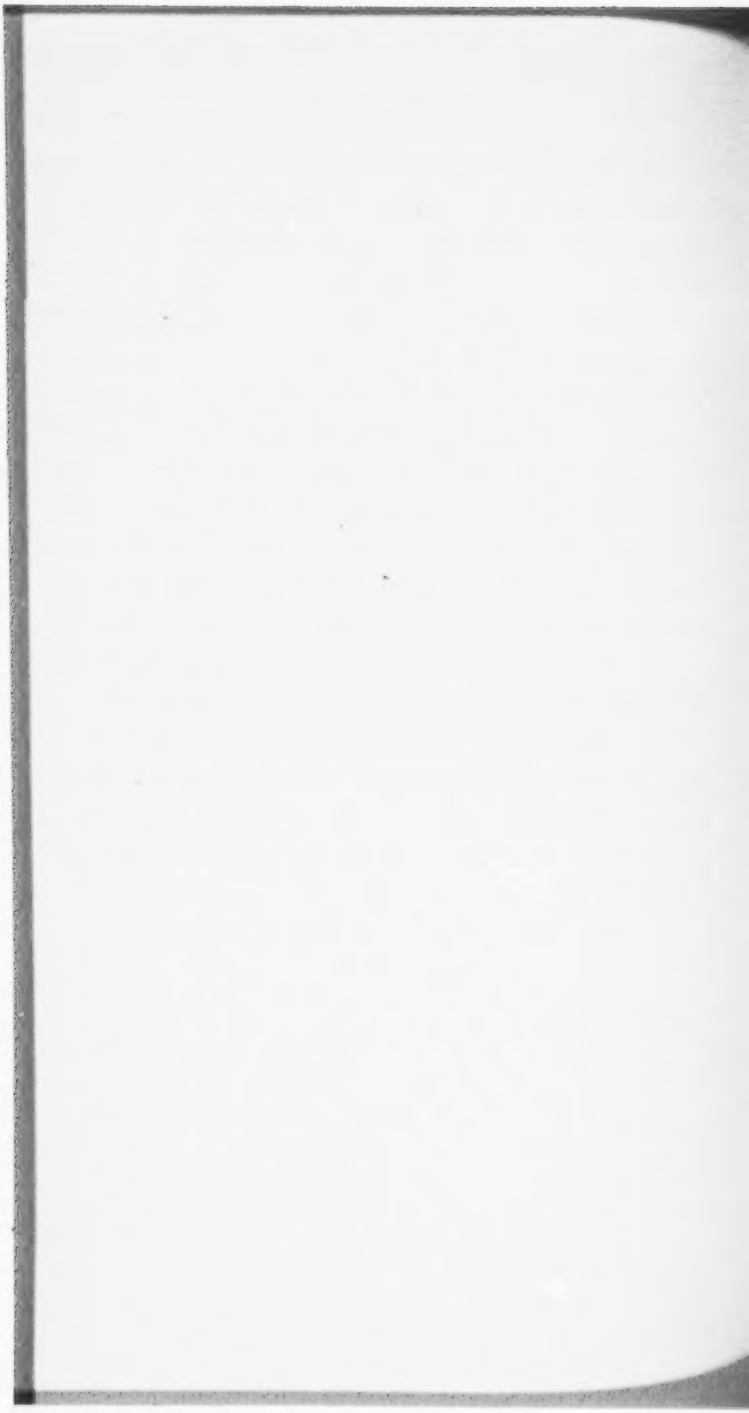

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No. ~~687~~ 240.

COMMENT ON MR. MAXWELL'S REPLY TO MOTION TO ADVANCE.

Mr. Maxwell suggests the importance of deliberate and thorough preparation of argument. There must of necessity be a limit to such considerations if the emergency requires hearing at this term. The few points in the case converge on the single principle that no person shall be compelled in any criminal case to be a witness against himself; the subordinate issues are few, the facts simple, and the record brief, as the court will perceive from Judge Lurton's opinions.

Of course the case and the principle involved are very important, but there is ample time before a hearing at this term of court for careful investigation and even elaborate preparation. I venture, with entire

deference, to say that, apart from possible engagements (which Mr. Maxwell would not invoke), the distinguished counsel can adequately prepare this case in the two weeks intervening before May 8, if the court should be disposed to revise the recent adjournment order, or in the three weeks before May 15. Those dates, respectively, would leave to the court three or two weeks to dispose of the case before the final adjournment for the term.

If the court shall grant the motion and fix either the 8th or 15th of May as the date of hearing, I will undertake to place the Government brief in Mr. Maxwell's hands at least one week in advance.

HENRY M. HOYT,
Solicitor-General.

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